

(1995) 10 DEL CK 0025

In the Delhi High Court

Case No : Civil Writ Petition No. 1322 of 1973 and Civil Miscellaneous Appeal No. 485 of 1995

Gopal Trading Co.

APPELLANT

Vs

Government of India

RESPONDENT

Date of Decision : 09-10-1995

Acts Referred:

Government Grants Act, 1895 — Section 3

Citation : (1995) 60 DLT 462 : (1996) 36 DRJ 177

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Rajiv Dutta, Vipin Nayar, E.X. Joseph and S.T. Siddiqui, for the Appellant;

Judgement

Vijender Jain, J.

(1) This writ petition challenges the notice dated September 7, 1973 issued by the respondents pursuant to the resumption proceedings whereby the respondents resumed 2.64 acres of land with certain constructions of plot No.24, Nathu Singh Road, Cantonment Road, Kanpur. The notice was challenged inter alias on various grounds. Mr.Rajiv Datta, learned counsel for the petitioners, has vehemently contended that the resumption proceedings is void ab initio because it affects the fundamental right of the petitioners as they have been deprived of their land, which was granted to them under the Government Grants Act vide order No.179 of 1836. Mr.Datta has argued that the right of the petitioners cannot be taken away by any action of the respondents, which deprives the owners of their right, title and interest to the said property. He has also contended that resumption proceedings are otherwise hit by Articles 19 and 20 of the Constitution of India.

(2) Another leg of the arguments advanced by the learned counsel for the petitioners is that the impugned notice is bad as it does not provide any compensation nor has specified any guideline, which has been taken into

consideration for fixing such compensation and, Therefore, the impugned notice is ultra virus and illegal.

(3) The arguments of the learned counsel for the petitioners cannot be acceded to in view of the decision of this Court in *Raj Singh Vs. The Union of India and Others*, in which the Division Bench of this Court held -

"THE regulations contained in Order No.179 of 1836 regarding the grant of lands situated in cantonment areas are provisions of a statutory nature which were continued by the Government of India Act from 1859 to 1935 on the principle embodied in Section 24 of the General Clauses Act, 1897. They must thus be deemed to be continued in force in view of Art-272(1) of the Constitution.

WHATEVER the nature of the Regulation it is a self-contained provision prescribing the procedure as to the grant and resumption of the land and hence recourse to the CPC or the Specific Relief Act in that behalf is neither contemplated nor necessary.

THE Regulation does not contemplate the intervention of any judicial or quasi-judicial authority between the Government and the grantee and the total absence of any interest or right in or to the demised land estops the grantee, who is a mere licensee from saying that the Government could not have resumed possession of the land and the house thereon without proper proceedings for the same.

the petitioners, thus, being a mer "Occupier" of the land, a licensee whose license under the grant and under the law, was revocable at pleasure of the licensor, cannot be said to have any legal possession over the land as against the licensor though he may have such possession against all others and Therefore he cannot claim legal protection against the owner."

(4) The judgment of this Court has been approved by the Supreme Court in a recent judgment reported as *Union of India & ors. v. Harish Chand Anand* 1995 (4) Scale 586. The Supreme Court while considering the judgment of the Division Bench of the Delhi High Court and Allahabad High Court agreed with the view taken by the Delhi High Court and held -

".....SUFFICE it to state that the Order No.241 though does not contemplate of issuing prior notice to erstwhile licensee whose license has been determined under Clause I of the Grant, before determination of the actual amount, the erstwhile grantee is entitled to a notice, so that the grantee would be at liberty to place before the competent authority all relevant material for determining the value of the budding and for payment of the amount thereof."

(5) In view of the authoritative pronouncement by the Supreme Court in *Union of India & ors. v. Harish Chand Anand*'s case (supra), it is not open for Mr.Datta to challenge the constitutional validity or the legality of the impugned notice dated September 7, 1973 as the status of the petitioners was of "occupier". However, regarding the second contention of the learned counsel for the petitioners, the

determination of the compensation has to be after providing the petitioner an opportunity so that they could place the facts at the disposal of the respondents so as to enable the respondents to come to a conclusion for determining the value of the building and the payment of the amount to be made thereof. In para-4 of the impugned notice, it has been inter alias mentioned that the Government was prepared to pay and offer a sum of Rs.15,858/= as value of the authorised erections standing thereon. However, the impugned notice is silent as to what was the relevant material for determining the value of the authorised erections standing on 2.64 acres of land.

(6) In view of the law settled by the Supreme Court, the impugned notice regarding the resumption cannot be interfered with. Although, in the writ petition, no specific prayer has been made by the petitioners about compensation not being adequate or was not based on any objective consideration. However, the petitioner had mentioned in the grounds of writ petition as one of the ground inter alias challenging the impugned notice on the ground of no formula being laid for the purposes of calculating compensation in the case of the petitioner. Even otherwise, it would be in the interest of justice that the respondents should pay compensation on the basis of relevant materials as to the size and the area under construction, the cost spent by the petitioners over the said authorised erections, that will be in consonance and spirit of the law laid down by Supreme Court in *Union of India & ors. v. Harish Chand Anand's case* (supra). Therefore, to this limited extent, I partly allow the writ petition. The respondents will give opportunity to the petitioners by giving one month's notice to the petitioners to enable the petitioners to place all the relevant materials before the respondents, Therefore, petitioners shall file such material with the respondent within one month after receipt of notice from respondent. Respondents shall then dispose of that application in accordance with the regulations under the Government Grants Act within three months determining the value of the super-structure and compensation to be paid to the petitioner.

(7) With these observations, this writ petition is disposed of.